IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

Hari Ram & Anr. vs. The State of Rajasthan.

D.B.Cri. Appeal No.276/1989

Under Section 374 Cr.P.C. against the judgment dated 29.07.89 passed by the Addl. Sessions Judge No.2, Jodhpur, in Sessions Case No.55/1985.

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Date of Judgment: 27th September, 2007.

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD
HON'BLE MR.JUSTICE MUNISHWAR NATH BHANDARI

Mr.Sandeep Mehta]
Mr.J.S.Choudhary] for the appellants.

Mr.JPS.Choudhary, Public Prosecutor.
Mr.G.R.,Punia for the complainant.

BY THE COURT :(PER HON.MR.BHAGWATI PRASAD,J.)-

The present appeal has been filed by the accused appellants Hari Ram and Bhana Ram against their conviction and sentence as passed by the Additional Sessions Judge No.2, Jodhpur in Sessions Case No.55/1985 dated 29.07.1989.

The prosecution was initiated on the basis of the report lodged at police station Dangiawas on 29.03.83 at 02.15 AM by Naina Ram . In the written report so submitted it was informed by Naina Ram that he, along with his brother Dhana Ram , were going to the place of in laws of Dhana Ram. While they arrived in front of the house of Sakta Ram then they were confronted by six accused persons namely, Bhana Ram, Hari Ram, Buksa Ram, Girdhari Ram, Teja Ram, and Mangilal , who were armed with dharia, lathi and kassi. . These persons, sitting at the house of Bhanaram had become alarmed and they said that they will kill the informant because the brother of Dhana Ram had become motbir in a case . No sooner the accused arrived, Hariram gave a kassi blow on Dhana Ram and Bhanaram gave a blow of dharia on the first informant. It was further stated that all the accused persons started beating them. Both the injured had fallen on the ground and all the accused started assaulting them. By the injuries Dhana Ram became unconscious. Dhana Ram was taken to the hospital and a case under section 147 ,

148, 149, 324, 323 and 307 IPC was registered. During the course of treatment Dhana Ram died, after 44 days, and with his death the offence under section 302 IPC was also added.

On the basis of such report, investigation was conducted and charge sheet was filed against the all the accused persons. The case was committed and in turn it was made over to the trial court for trial. At the trial the accused persons were charged as under :

1	*2*	*3*
1	Buksa Ram , Teja Ram, Mangilal	147,302/149, 307/149 IPC
2	Bhana Ram	148, 307, 302/149 IPC
3	Hari Ram	148, 307/149 and 302 IPC

Accused denied the charges and claimed trial. At the trial, prosecution examined 22 witnesses. They exhibited 36 documents. The accused was examined under section 313 Cr.P.C. 2 defence witnesses were examined and 9 documents were exhibited in defence. The accused denied the charges and claimed trial.

After considering the evidence at the trial, the learned trial Judge came to the conclusion that the four accused persons , namely Baksa Ram, Teja Ram, Girdhari Ram and Mangi Lal deserve

the benefit of doubt as they were not involved, because there were only 4 injuries sustained by the deceased and the injured. Thus a case under section 149 IPC was not made out against the accused appellants. Accused Hari Ram was convicted under section 302 IPC and Bhana Ram was convicted under section 326 IPC. The of fences under section 307, 302/149 IPC were not held to be made out and the other accused were acquitted.

The learned counsel for the appellant stressed that the basic story of the prosecution has been disbelieved, wherein it was stated that there were 6 accused persons who made the assault, out of them 4 have been acquitted. Once when the basic story of the prosecution has been disbelieved and implication of Section 149 IPC have been excluded then basic story of the prosecution has been exposed to an assault whereby the entire case can be made to suffer.

The learned counsel for the appellants further urged that the prosecution came with the definite motive alleged against the accused. The motive was Dhana Ram had become motbir , therefore, they wanted to cause assault on his brother. This alleged motive was found to be false. The learned counsel for the petitioner further submitted that there is no corroborative piece of evidence, as

the weapon recovered have not been sent for chemical examination and, therefore, the witnesses, on the saying of the learned trial court, are not fully reliable witnesses. The other accused having been acquitted, they can at best be said to be partly reliable . Partly reliable witnesses cannot be made the basis of conviction, unless the same is corroborated by some independent evidence. The same being not available on record, the conviction, as ordered by the trial court , deserves to be set aside .

In the alternative, the learned counsel submitted that the deceased Hari Ram has died after 44 days of the incident. In that view of the matter, the offence under section 302 IPC cannot be said to be made out, because deceased sustained only one grievous hurt, i.e. on head and another injury is only an abrasion. In this light , the learned counsel submitted that the origin of the fight being not disclosed by the prosecution , the prosecution case is subject to doubt and in that light, when it is observed that there were injuries on the person of accused Teja Ram then definitely the prosecution has tried to conceal the origin of the fight. As the things appear, the fight must have been mutual in between the parties, wherein the complainant party also assaulted the accused party. There must have been some mischief done by the prosecution witnesses also, and that

has resulted into an ugly incident, where one of the injured lost his life that too after 44 days of the incident.

The learned counsel submitted that against Hariram in that background, a lenient view is required to be taken, and his conviction requires to be converted from under section 302 IPC to Section 304-II IPC, wherein the presumption is required to be taken that Teja Ram was assaulted and in turn the accused party retaliated and caused injuries to the complainant party.

It was further asserted on behalf of the learned counsel that the other accused Bhana Ram is also guilty of only causing one grievous hurt and another abrasion to the injured Naina Ram. The injuries are not such, which can be brought into effect under section 326 IPC. The most startling feature, according to the learned counsel for the appellants, is the statement of PW/19 Dr.M.P.Joshi. He in his statement, on being asked by the court, stated that the two injuries are on the head of Naina Ram and the other to Hari Ram could be caused by dharia and not by kassi. According to the prosecution, it was the assault with kassi, which resulted into the death of the deceased Hari Ram. This shows that there was only one arm , dharia. It could be injury by dharia which

resulted into the death of the deceased. But the same is alleged to have been caused by kassi.

This doctor has further stated in his statement that he has not examined the bulbs , to see the sharp cuts which would come only by a sharp edged weapon. The nature of injuries sustained by Naina Ram is subject to doubt , as the same is alleged to be by a sharp edged weapon, because either Hari Ram used it or Bhana Ram used it. Both of them cannot be said to be having used dharia, for the injuries of the deceased and the injured could come by dharia only as per the evidence of doctor. Thus, if the injury by sharp edged weapon could be attributed to Hari Ram then it can be very well said that dharia was possessed by accused Hari Ram and not by accused Bhana Ram. There was a confusion in the prosecution case on this count. Thus, the learned counsel submitted that the conviction can be converted into one under section 325 IPC because sometimes a blunt weapon may give an injury which may have the appearance of sharp edged injury. That could only be examined by examination of hair bulbs which was not examined by the doctor and, therefore, the conviction of Bhana Ram deserves to be converted into Section 325 IPC. He has remained sufficient period behind the bars and under section 325 he deserves to be granted benefit of probation

of offenders Act because so late in the day sending him behinds the bars would not be appropriate .

Per contra, the learned Public Prosecutor submitted that it is a case where injury on the accused are not of much importance. Both the convicted accused have been held guilty for causing injuries to deceased and injured and rightly so. The findings of the t rial court should not be interfered. They are based on the evidence of injured eye witnesses. The same has been relied upon by the t rial court.

We have heard the learned counsel for the parties and have given our thoughtful consideration to the material available on record.

As regards the case of accused Hari Ram , if the alternative submission of the learned counsel for the appellants, is taken into consideration, then in the background of medical evidence, the injury could be caused by dharia and he was assigned only a kassi and in that background , we are persuaded to hold that in view of he fact that accused Teja Ram has also sustained injuries and as sustaining of the injury show that origin of the fight was not truthfully deposed by the prosecution witnesses and therefore, it

would not be safe to convict the accused under section 302 IPC.

Consequently, we convert their conviction from under section 302 IPC to Section 304-II IPC. Accused Hari Ram has remained behind the bars for nearly one year. The deceased died after 44 days of the incident and in that background , it would be appropriate if substantive sentence as served out by these accused is held to be sufficient for maintaining the sanctity of justice. However, the accused is ordered to pay Rs.1,00,000/-as compensation to the next of kin of deceased Dhana Ram.

As regards the conviction of accused Bhana Ram is concerned, there is a confusion and the confusion should lean in favour of the accused. He is a Government servant. Having remained so many years on bail, it would be appropriate if he is convicted under section 325 IPC , because the presence of sharp edged weapon could only be in the hand of one accused and the doctor has not conclusively held that it was sharp edged weapon only which could cause injuries to both deceased and the injured. If Hari Ram has caused injury to the deceased and it could well be that he was the assailant of the injured Naina Ram. The acquittal of four accused persons show that there was a positive attempt on the

part of the prosecution to over implicate.

We, consequently, convict the accused appellant Bhana Ram under section 325 IPC and grant him benefit of Sections 3 and 4 of the Probation of Offenders Act. He should fill in a bond, for keeping peace and harmony for a period of 2 years hence.

In the result, the appeal is partly allowed. The conviction of accused Hari Ram is converted from section 302 IPC to Section 304 -II IPC. He is awarded the substantive sentence already undergone by him which is nearly one year. The conviction of accused Bhana Ram is altered from Section 326 IPC to Section 325 IPC . Because the weapon of offence becomes doubtful. He is granted benefit of section 3 and 4 of the Probation of offenders Act and he should fill in the bond for keeping peace and harmony for 2 years hence.

In the result the appeal is allowed in part as indicated above.

(MUNISHWAR NATH BHANDARI), J. **(BHAGWATI PRASAD), J.**

L.George